

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA CYPHERT and MILT CYPHERT,) No. 12-cv-01592-JAH-RBB
Individually and on Behalf of All Others)
Similarly Situated,) CLASS ACTION

Plaintiffs,

vs.

THE SCOTTS MIRACLE-GRO COMPANY,
et al.,

Defendants.

DAVID KIRBY,

No. 12-cv-1729-JAH-RBB

Plaintiff,

vs.

THE SCOTTS MIRACLE-GRO COMPANY,

Defendant.

[Caption continued on following page.]

ORDER GRANTING JOINT MOTION FOR ORDER CONSOLIDATING CASES AND
APPOINTING PLAINTIFFS' CO-LEAD COUNSEL

1	EDITH SALKELD,)	No. 12-cv-1728-JAH-RBB
2)	
	Plaintiff,)	
3)	
	vs.)	
4	THE SCOTTS MIRACLE-GRO COMPANY,)	
5)	
	Defendant.)	
6	MARGARET BRUMFIELD, et al.)	No. 12-cv-1901-JAH-RBB
7)	
	Plaintiffs,)	
8)	
	vs.)	
9	THE SCOTTS MIRACLE-GRO COMPANY,)	
10)	
	Defendant.)	
11)	
12)	
13)	
14)	
15)	
16)	
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1 This Court, having considered the Joint Motion for Order Consolidating Cases and
 2 Appointing Plaintiffs' Co-Lead Counsel, and good cause appearing,

3 **IT IS HEREBY ORDERED** that:

4 1. The following actions are hereby consolidated for all purposes:

Abbreviated Case Name	Case Number	Date Filed
<i>Cyphert v. SMG, et al.</i>	12-cv-1592-JAH-RBB	June 27, 2012
<i>Salkeld v. SMG</i>	12-cv-1728-JAH-RBB	July 13, 2012
<i>Kirby v. SMG</i>	12-cv-1729-JAH-RBB	July 12, 2012
<i>Brumfield v. SMG</i>	12-cv-1901-JAH-RBB	June 13, 2012

11 2. The caption of this consolidated action shall be "*In re Morning Song Bird Food*
 12 *Litigation*," and the files of this consolidated action shall be maintained in the lead case, case
 13 Number 12-cv-1592 JAH (RBB).

14 3. The organizational structure of Plaintiffs' counsel established by this Order shall bind
 15 Plaintiffs' counsel in the consolidated action, including any action subsequently governed by this
 16 Order as described herein.

17 4. The Court appoints the following law firms to act on behalf of Plaintiffs in the
 18 consolidated actions, including any plaintiffs subsequently governed by this Order, with the
 19 responsibilities hereinafter prescribed: Robbins Geller Rudman & Dowd LLP and Dowd & Dowd
 20 P.C.

21 5. Plaintiffs' Co-Lead Counsel shall have authority to speak for all Plaintiffs in matters
 22 regarding pre-trial, trial, and settlement negotiations. Plaintiffs' Co-Lead Counsel shall have day-to-
 23 day responsibility for the conduct of the consolidated litigation; shall determine how to prosecute the
 24 case; and shall initiate, coordinate and supervise the efforts of Plaintiffs' counsel in the consolidated
 25 action in the areas of discovery, briefing, trial, and settlement.

26 6. Plaintiffs' Co-Lead Counsel may delegate responsibility for specific tasks to other
 27 Plaintiffs' counsel in the consolidated action in a manner to assure that pretrial preparation is
 28 conducted effectively, efficiently and economically; shall assist in maintaining communication

1 among counsel; and shall monitor the activities of Plaintiffs' counsel to assure that schedules are met
2 and unnecessary expenditures of time and money are avoided. Plaintiffs' Co-Lead Counsel shall
3 maintain the official service list of all Plaintiffs and Plaintiffs' counsel in the consolidated action,
4 including their addresses. Plaintiffs' Co-Lead Counsel shall perform whatever any additional
5 functions that may be assigned to them by the Court. Agreements reached between Defendants and
6 Plaintiffs' Co-Lead Counsel are binding on all Plaintiffs and their counsel. No discovery shall be
7 served, and no motion shall be filed, by any Plaintiffs' counsel without the consent of Plaintiffs' Co-
8 Lead Counsel, unless leave of Court is obtained.

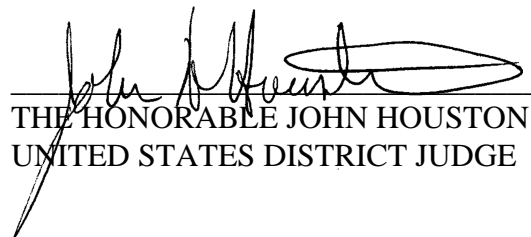
9 7. Nothing in this Order shall constitute a waiver or limitation of the Defendants' rights
10 to claim that a named entity is an improper party, lacks personal jurisdiction, has any Rule 12 of the
11 Federal Rules of Civil Procedure defenses or objections, or should be dismissed, and the Defendants
12 expressly reserve any defenses, claims, or objections under applicable law to any claims, complaints,
13 filings, or allegations made in the complaints already filed or which may be subsequently filed. Nor
14 shall anything in this Order restrict or modify any Defendant's right to move for or request separate
15 trials, proceedings, or determinations at any stage under Rule 42 of the Federal Rules of Civil
16 Procedure or applicable law.

17 8. Plaintiffs shall file a Consolidated Complaint within 28 days of the date that this
18 Order is filed. Defendants need not respond to the complaints already filed in the above-referenced
19 actions.

20 9. Defendants shall answer or otherwise respond to the Consolidated Complaint within
21 90 days of service thereof.

22 **IT IS SO ORDERED.**

23 DATED: September 10, 2012



THE HONORABLE JOHN HOUSTON
UNITED STATES DISTRICT JUDGE